that § 34 is not applicable, for that section presupposes that there has been no delivery. They claimed that delivery may be actual or constructive. "Delivery means transfer of possession, actual or constructive, from one person to another." § 2 of the same act. By § 35, said the minority, in the hands of a holder in due course, a check, though incomplete when stolen, is presumed, conclusively, to have had a valid delivery. Delivery is conclusively presumed in case the instrument is complete when issued or stolen, or in case authority is reposed in someone to supply anything needed to make it perfect. CRAWFORD, NEG. INST. LAW, § 35, note c. That section of the law changed the rule in this regard in some states. *Burson* v. *Huntington*, 21 Mich. 415, 4 Am. Rep. 497. But in the case of an incomplete and undelivered instrument, stolen and then completed and negotiated, without authority, the cases and texts before the Statute held that delivery is not conclusively presumed. *Baxendale* v. *Bennett*, L. R. 3 Q. B. D. 525; *Foster* v. *Mackinnon*, L. R. 4 C. P. 704; *Nance* v. *Lary*, 5 Ala. 370; *Caulkins* v. *Whistler*, 29 Iowa 495, 4 Am. Rep. 236; BYLES, BILLS, (Ed. 11) 187; 1 PARSONS, NOTES and BILLS, 114; Filling the blanks, in such a case, is sheer forgery. DANIELS, NEG. INST., Ed. 5, § 841. Under the Statute, Mr. CRAWFORD said, in note c. to § 35, in his Neg. Inst. Law, that the provision for conclusive presumptive delivery does not apply in such a case as this. There is a dictum to the same effect in *Mass. Nat. Bank* v. *Snow*, 187 Mass. 159. The only case we have been able to find intimating a contrary holding is one cited in BYLES, BILLS, Ed. 6, p. 103, as "*Rex* v. *Revett*, Bury Summer Assizes, 1829, Coram Garrow, B." But it seems to be unsound and against the great weight of authority.

BILLS AND NOTES—NOTE DISTINGUISHED FROM TESTAMENTARY DISPOSITION. —A note, of a church, was attached to a contemporaneously executed agreement, which provided that the maker should pay interest on the note to the payee for life or during the existence of the loan, which was five years, and that if the principal should not be demanded by the payee in person during her life, the note, immediately upon her death, should be returned to the church and the loan retained as a donation. *Held*, (WATSON, P. J. and ROBY, J., dissenting), that the note and agreement constituted but one contract, the money becoming due after five years and then only upon the payee's personal demand; and, she having died without attempting to enforce the note, the right to the money became absolute in the church. *Bundrant* v. *Boyce et al.* (1910), — Ind. App. —, 91 N. E. 968; dissenting opinion in 92 N. E. 126.

The majority held that the note and agreement constituted but one contract. *Allen* v. *Nofsinger*, 13 Ind. 494; *Williams* v. *Markland*, 15 Ind. App. 669, 44 N. E. 562; which contract vested in the church a present interest in the money, to cease or become absolute upon the doing or not doing of a certain act of the obligee—an act that was not done. The minority held that it was not a gift in praesenti, but that by the terms of the agreement, it was a mere indebtedness during the payee's life, payable on demand. *Dimon* v. *Keery*, 31 Misc. 231, 64 N. Y. Supp. 1091. The minority held that it was

an attempt to make a posthumous disposition of property, not witnessed, and therefore ineffectual to relieve the church of payment of the note. A gift must vest at once. *Love* v. *Francis,* 63 Mich. 181, 29 N. W. 843, 6 Am. St. Rep. 290; and pass beyond the control of the donor. *Hafer* v .*McKelvey,* 23 Pa. Super. Ct. 202. A gift cannot be made to take effect in the future. *In re Soulards Estate,* 141 Mo. 642, 43 S. W. 617. The cases have established that an instrument in any form, if the obvious purpose is not to take effect until after the death of the maker of the instrument, can operate as a will only. *Habergham* v. *Vincent,* 2 Ves. Jr. 204, 231; *Cover* v. *Stem,* 67 Md. 449, 10 Atl. 231, 1 Am. St. Rep. 406. For the distinction between wills and notes or other instruments, see ROOD, WILLS, § 73-75 and cases cited; full notes are given in 92 Am. Dec. 383-389 and in 89 Am. St. Rep. 486-500. The true test is whether the promisee acquires rights in praesenti or is to acquire them only in future, upon the promisee's death. If the latter, they can be conferred only by will. *Sullivan* v. *Sullivan,* 161 N. Y. 554, 56 N. E. 116; *Babb* v. *Harrison,* 9 Rich. Eq. (S. C.) 111, 70 Am. Dec. 203; *Robinson* v. *Schly,* 6 Ga. 515; *In re Diez,* 50 N. Y. 88, 93; JARMAN, WILLS, 22-23. In *Fiscus* v. *Wilson,* 74 Neb. 444, 104 N. W. 856, a mortgage was to become void upon the mortgagee's death, and the money, secured thereby, provided the interest was kept paid up, was to remain to the mortgagor. *Held,* not an attempted testamentary disposition. It did not appear, however, that the mortgagee could have demanded payment during her lifetime, unless the interest was not paid. A memorandum upon a note that it was to become null and void upon the payee's death, has been held void as an attempted testamentary disposition, not executed, as required by the statute, and therefore ineffective. *Dimon* v. *Keery,* supra; or, again, testamentary and entitled to probate. *Hunt* v. *Hunt,* 4 N. H. 434. See also *Sherman* v. *New Bedford Bank,* 138 Mass. 581.

CONTRACTS—CONSIDERATION—FORBEARANCE TO SUE.—Plaintiff was legatee under a will by which the estate was devised to B. and another in trust. Plaintiff was about to take legal proceedings to compel payment of her legacy. B. promised to pay plaintiff the difference between what the trustees were willing to pay her and the full amount of her legacy if she would not sue. *Held,* forbearance to compel the payment of the legacy is sufficient consideration to support the promise of B. *In re Pray's Estate; Thayer* v. *Pray's Estate* (1910), — Minn. —, 127 N. W. 392.

Consideration is necessary to the validity of every simple contract and consists of some benefit to the promisor or some detriment to the promisee. ANSON, CONTRACTS, pp. 41, 69. In a case where an agreement had been made between the principal beneficiary under a will, and the heirs of the testator, by which the beneficiary agreed that if the heirs would not contest the will and would sign an admission of service of the citation, he would pay each of them two hundred dollars, it was held that it was a sufficient consideration, and the promise was binding upon him. *Palmer* v. *North,* 35 Barb. 282; *Clark* v. *Lyons,* 77 N. Y. Supp. 697, 38 Misc. Rep. 516; *Grochowski* v. *Grochowski,* (Neb.) 109 N. W. 742. But the promisee must have good and